

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

JAMES S. PENDERGRAFT, IV,

Case No.: 6:18-bk-06437-KSJ

Chapter: 7

Debtor.

**M & T BANK'S VERIFIED
MOTION FOR RELIEF FROM AUTOMATIC STAY**

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file your response with the Clerk of the Court at 400 W. Washington Street, Suite 5100, Orlando, FL 32801 and serve a copy on the movant's attorney, McCalla Raymer Leibert Pierce, LLC, 110 S.E. 6th Street, Suite 2400, Ft. Lauderdale, FL 33301, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the response and may grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

M & T Bank (the "Secured Creditor"), its successors and/or assigns, as a secured creditor of the bankruptcy estate of James S. Pendergraft, IV (the "Debtor"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d), and in support thereof, states as follows:

1. Debtor's Bankruptcy Case. On October 18, 2018, the Debtor filed the above-captioned Chapter 7 bankruptcy case.
2. Jurisdiction. Jurisdiction of this matter is properly before this Court pursuant to 28 U.S.C. § 1334 and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure.

3. Right to Foreclose. M&T Bank services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of M & T Bank. Movant, directly or through an agent, has possession of the Note. The Note is either made payable to Movant or has been duly endorsed.

4. The Note and Mortgage. On July 29, 2005, 609 Virginia Drive Corporation, a Florida corporation by James S. Pendergraft, M.D. executed and delivered a note (the "Note") in the principal amount of \$90,000.00, which is secured by a Mortgage and Security Agreement (the "Mortgage"). The Mortgage was executed by 609 Virginia Drive Corporation, a Florida corporation by James S. Pendergraft, M.D. The Mortgage is recorded in Official Records Book 08224 at Page 3224 with an Instrument Number 20050668040, of the Public Records of Orange County, Florida. A copy of the Mortgage, together with the Note, and any applicable Assignments, are attached hereto as Exhibit A, B and C.

5. Collateral. Secured Creditor is entitled to enforce the Note and Mortgage, which are secured by the real property (the "Property") located at 609 Virginia Dr., Orlando, Florida 32803 and further described as follows:

Lots 17, 18 and 19, FIRST ADDITION TO LAKE HIGHLAND PARK, according to the plat thereof as recorded in Plat Book "H", Page 99, of the Public Records of Orange County, Florida.

6. Relief Requested. Secured Creditor requests the entry of an order modifying the automatic stay pursuant to 11 U.S.C. § 362(d) to permit Secured Creditor to enforce all of its in rem remedies against the Property pursuant to the Note and Mortgage. The requested relief should be granted for the following reasons:

- While the Property is not property of the estate; the Debtor's address listed on the

docket is the location of the Property. Secured Creditor is filing the instant motion to seek relief as to any possessory interest the filing Debtor may have in the Property;

- Interest continues to accrue; and
- Property taxes continue to accrue.

7. Request for Attorney's Fees and Costs. Secured Creditor requests attorney's fees in the amount of \$350.00 and costs of \$181.00, as a result of filing the instant motion.

8. Request for Waiver of 14-Day Stay of Relief. Secured Creditor requests that the 14 day stay, pursuant to Fed. R. Bankr. P. 4001(a)(3), be waived.

Wherefore, Secured Creditor requests the entry of an order modifying the automatic stay and for such other and further relief as the Court deems just and proper.

McCalla Raymer Leibert Pierce, LLC

By: /s/Austin Noel

Austin Noel
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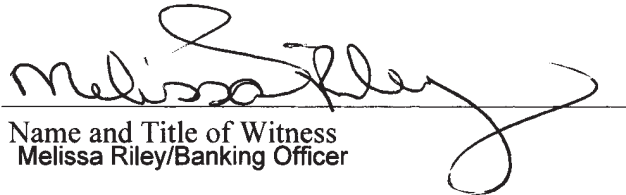
VERIFICATION

The undersigned Melissa Riley (name of witness), as the
Banking Officer (title/position of witness) of M & T Bank; hereby declares
under penalty of perjury that:

(i) I have personal knowledge of the business books and records of M & T Bank;

(ii) Based on my review of the business books and records of M & T Bank, the
information and allegations set forth in paragraphs 3 through 5 above, are true and correct to the
best of my knowledge; and

(iii) The documents attached hereto as **Exhibit A, B, and C** are true and correct copies of
the originals.


Name and Title of Witness
Melissa Riley/Banking Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7th, 2019, a true and correct copy of the foregoing was served by U.S. Mail, First Class to James S. Pendergraft, IV, 609 Virginia Drive, Orlando, FL 32803; and those parties receiving CM/ECF service

- Shreena Augustin bkyecf@rasflaw.com, saugustin@rasflaw.com; ras@ecf.courtdrive.com
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By: /s/Austin Noel
Austin Noel